EXHIBIT B

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Re: ***In re: Valsartan, Losartan, and Irbesartan Products Liability Litigation,*** **No. 1:19-md-02875-RBK-SAK (D.N.J.)**

Dear Counsel:

On behalf of the manufacturer defendants, we write in accordance with Federal Rule of Civil Procedure 37(a)(1) to confer in good faith with Plaintiff MSP Recovery Claims, Series LLC ("MSPRC"), regarding its failure to comply with Special Master Order No. 73 [Dkt. 2249] ("SMO 73"), entered by the Special Master on January 24, 2023, and Case Management Order 32 [Dkt. 2343] ("CMO 32"), entered by the Court on April 21, 2023. SMO 73 ordered MSPRC to produce all "documents reflecting the subsidies, reimbursements, and rebates it received from CMS during the time period for which it is seeking damages." SMO 73 at 3-4. CMO 32 ordered MSPRC to complete its rolling productions by May 3, 2023. Notwithstanding these two orders, MSPRC failed to produce the substantial majority of documents responsive to SMO 73 by May 3, 2023. The manufacturer defendants demand production of the missing documents by Friday, May 12, 2023, or they intend to file a motion for rule to show cause for MSPRC's violations of SMO 73 and CMO 32. I am available to meet and confer regarding this matter on Thursday, May 11, from 9 am to 2 pm ET, or Friday, May 12, from 9 am to 10:30 am or 12 pm to 5 pm ET.

SMO 73 granted in part the TPP Defendants' Joint Motion to Compel Production of Documents and Data Relevant to Plaintiff's Alleged Damages [Dkt. 2178] ("Motion to Compel"). Specifically, the Special Master granted the Motion to Compel with respect to Request No. 2:

> Request 2. **Subsidy, Reimbursement, and Rebate Data**: Data [in Excel format] and reports reflecting subsidies, reimbursements, and rebates that You received from CMS [Center for Medicare and Medicaid Services], including but not limited to prescription drug event ("PDE") reports and all PDE payment records reflecting reimbursements and payments for valsartan-containing drugs, and other standard reports and data available through CMS which reflect payments made or received by You for any prescription drugs

> for Insureds enrolled in Your Plans during the Relevant Time Period, such as Monthly Membership Summary Reports, Plan Payment Reports, [and] Payment/Interim Plan Payment Records Reports.

[Dkt. 2178-1 at 2]. The TPP Defendants identified with specificity in their supporting brief a list of responsive data reports encompassed by Request No. 2:

- Monthly Membership Reports (MMR)
- Monthly Membership Summary Data Reports (MMSR)
- Monthly Membership Summary Data Files (MMSD)
- Plan Payment Reports (PPR)
- Plan Payment Report/Interim Payment Data Files (IPPR)
- Payment Records Reports
- Payment Reconciliation System (PRS) annual reports detailing the annual reconciliation based on PDE records
- Risk Adjustment System (RAS) Prescription Drug Hierarchical Condition Category (RxHCC) Model Output Data Files
- RAS RxHCC Model Output Reports
- Medicare Advantage Organization (MAO) 004 Reports – Encounter Data Diagnosis Eligible for Risk Adjustment
- Prescription Drug Event (PDE) Submittal File
- Prescription Drug Event (PDE) PDFS Response Data File
- Prescription Drug Event (PDE) DBC Cumulative Beneficiary Summary Report
- COB-OHI files and COB-OHI Supplement Records, which include National Drug Codes (NDCs) submitted by Patient Assistance Programs (PAPs).

[*Id*. at 7-8].

MSPRC opposed this request in its entirety and filed its own brief in opposition. [Dkt. 2181]. Following briefing and argument, the Special Master entered SMO 73 granting the Motion to Compel with respect to Request No. 2. The Special Master found, "The extent to which such payments [by TPPs for at-issue valsartan drugs] were offset by subsidies, reimbursements or rebates from CMS appears clearly relevant to the determination of actual damages sustained by the alleged contamination of the VCDs." SMO 73 at 3-4 (citing *In re Namenda Indirect Purchaser Antitrust Litig*., 115CV6549CMRWL, 2022 WL 3362429, at *11 (S.D.N.Y. Aug. 15, 2022)). The Special Master also specifically rejected MSPRC's argument that "aggregate" data are not relevant, holding: "The fact that the data are aggregated, and not produced on a per product basis, does not defeat the relevance of such data. Indeed, such data may be important in contesting damage calculations made by Plaintiff's experts." *Id*. at 4. Thus, the Special Master concluded: "Accordingly, MSPRC will be directed to produce the documents reflecting the subsidies,

reimbursements, and rebates it received from CMS during the time period for which it is seeking damages." *Id*.

Although productions were temporarily suspended following entry of the Court's class certification order, the District Court resumed discovery with the entry of CMO 32. Among other provisions, CMO 32 directed MSPRC to complete its rolling productions by May 3, 2023.

The May 3 deadline has now passed, and MSPRC has not produced the substantial majority of data, reports, and documented ordered by SMO 73. As of May 3, MSPRC has produced only a portion of its PDE data, omitting PDE claims data for EmblemHealth for date of service year 2014, omitting all PDE data for ConnectiCare claims (whereas MSPRC's claims data set and Dr. Conti's calculation contain claims related to both EmblemHealth and ConnectiCare), and omitting all other responsive data reports encompassed by Request No. 2. The following data and reports (the "Missing Production Materials") remain outstanding:

- Prescription Drug Event (PDE) data files for EmblemHealth for date of service year 2014
- PDE data files for ConnectiCare
- Monthly Membership Reports (MMR)
- Monthly Membership Summary Data Reports (MMSR)
- Monthly Membership Summary Data Files (MMSD)
- Plan Payment Reports (PPR)
- Plan Payment Report/Interim Payment Data Files (IPPR)
- Payment Records Reports
- Payment Reconciliation System (PRS) annual reports detailing the annual reconciliation based on PDE records
- Risk Adjustment System (RAS) Prescription Drug Hierarchical Condition Category (RxHCC) Model Output Data Files
- RAS RxHCC Model Output Reports
- Medicare Advantage Organization (MAO) 004 Reports – Encounter Data Diagnosis Eligible for Risk Adjustment
- COB-OHI files and COB-OHI Supplement Records, which include National Drug Codes (NDCs) submitted by Patient Assistance Programs (PAPs).

The Missing Production Materials are necessary for the manufacturer defendants' damages experts to complete their work and to fulfill their disclosure deadline of June 7, 2023, as also ordered by CMO 32. Accordingly, the manufacturer defendants demand production of the Missing Production Materials by May 12, 2023. In the event MSPRC does not comply with SMO 73 in full by this date, the manufacturer defendants intend to file a motion for rule to show cause for MSPRC's violations of SMO 73 and CMO 32.

This letter is directed solely to MSPRC's violations of SMO 73 and CMO 32. It does not waive any additional discovery issues the manufacturer defendants may raise with MSPRC, including the adequacy of other aspects of its rolling production and forthcoming requests for additional fact depositions based on MSPRC's trial-related productions.

I am available for a meet-and-confer call on the dates and times listed above to discuss this further. Thank you for your attention to these matters. We look forward to your response.

Very truly yours,

Gregory E. Ostfeld

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